

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In the Matter	:	Appeal from Chapter 7
	:	Bankr. Case No. 21-10699 (DSJ)
-of-	:	
KOSSOFF PLLC,	:	
	:	
Debtor.	:	

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DESIGNATION OF RECORD AND STATEMENT OF ISSUES

Designation of Record

Pursuant to Rule 8009(a) of the Federal Rules of Bankruptcy Procedure, Kossoff, PLLC and Mitchell H. Kossoff, Debtor in the above-entitled action and appellant herein designates the following contents for inclusion in the record on appeal:

1. Involuntary Petition Against A Non-Individual (Chapter 7) Against Kossoff PLLC Filed by Petitioning Creditor(s), filed 4/13/21 [*Docket #1*]
2. Notice of Appointment of Trustee Albert Togut, filed 5/12/21 [*Docket #15*]
3. Application for *Ex Parte* Relief / Chapter 7 Interim Trustee's *Ex Parte* Application for an Order (I) Directing the Preservation of Documents and Recorded Information and (II) Authorizing the Issuance of Subpoenas for the Production of Documents and Deposition Testimony Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, filed 5/24/21 [*Docket #26*]
4. Opposition filed by Walter Mack on behalf of Kossoff PLLC, filed 5/26/21 [*Docket #30*]
5. Objection to Motion and May 24, 2021 Order filed by Walter Mack on behalf of Kossoff PLLC, filed 6/4/21 [*Docket #48*]
6. Motion to Designate/Application for an Order (A) Designating Mitchell H. Kossoff as the Responsible Officer of the Debtor and (B) Compelling Him to (1) Produce

Information Requested by the Chapter 7 Trustee; (2) Appear for Examinations Under Oath at the Bankruptcy Code Section 341 Meeting of Creditors; and (3) Otherwise Cooperate With the Chapter 7 Trustee, filed 5/28/21 [*Docket #36*]

7. Objection to Motion Application for an Order Designating etc. filed by Walter Mack on behalf of Kossoff PLLC, filed 6/16/21 [*Docket # 80*]

8. Response / Chapter 7 Trustee's Reply to Objection to Bankruptcy Trustee's Application for an Order (A) Designating Mitchell H. Kossoff as the Responsible Officer of the Debtor and (B) Compelling him to (1) Produce Information Requested by Chapter 7 Trustee; (2) Appear for Examination Under Oath at the Bankruptcy Code Section 341 Meeting of Creditors; and (3) Otherwise Cooperate with the Chapter 7 Trustee and Motion to Quash All Subpoenas Compelling Testimony or Document Production from Him, His Fiduciaries or His Defense Team, filed 6/22/21 [*Docket # 89*]

9. Order Signed on 6/25/2021 Designating Mitchell H. Kossoff as the Responsible Officer of the Debtor, filed 6/25/21 [*Docket # 93*]

10. Transcript regarding Hearing Held on 06/24/2021, filed 6/28/21 [*Docket #101*]

11. Statement /Notice of Filing of Meet and Confer Status Report Pursuant to June 25, 2021 Order filed by Neil Matthew Berger on behalf of Albert Togut. (Attachments: # 1 Exhibit 1: Trustee's Letter # 2 Exhibit A: Proposed Scheduling Order # 3 Exhibit B # 4 Exhibit C), filed 7/1/21 [*Docket #105*]

12. Order Signed on 7/2/2021 Setting Supplemental Submissions Schedule and Hearing Concerning Kossoff's Production Obligations, filed 7/2/21 [*Docket #108*]

13. Order Signed on 7/12/2021 Enforcing Automatic Stay and Directing Mitchell H. Kossoff and Tenantracers, LLC to Provide the Trustee with Access to the Fifth Floor Premises to Inspect and Take Possession of Property of the Estate, filed 7/12/21 [*Docket # 117*]

14. Response /Trustee's Response to Kossoff Supplemental Submission Pursuant to Order Designating Kossoff as the Responsible Officer of the Debtor filed by Neil Matthew Berger on behalf of Albert Togut, filed 7/16/21 [*Docket #125*]

15. Transcript regarding Hearing Held on 07/22/2021 concerning Kossoff's Production Obligations, filed 7/23/21 [*Docket #134*]

16. Order Signed on 8/5/2021 Compelling Mitchell H. Kossoff to (1) Produce Information and Documents Required by the Chapter 7 Trustee; (2) Appear for Examination at Section 341 Meetings of Creditors; and (3) Otherwise Cooperate with the Chapter 7 Trustee, filed 8/5/21 [*Docket #137*]

17. Notice of Appeal and Civil Cover Sheet, filed 8/18/21 [*Docket # 144*]

18. Motion for Leave to Appeal, filed 8/18/21 [*Docket #145*]

19. Statement of Notice of Filing of Report Pursuant to August 5, 2021 Order filed by Walter Mack on behalf of Kossoff PLLC, filed 8/19/21 [*Docket #146*]

20. Motion for Stay Pending Appeal of the August 5, 2021 Order filed by Walter Mack on behalf of Kossoff PLLC, filed 8/19/21 [*Docket #147*]

Statement of Issues

Appellant Debtor intends to present the following issues on appeal:

1. Whether Mr. Kossoff's Fifth Amendment right not to incriminate himself in the ongoing criminal proceeding is rendered "inapplicable" in the context of a Chapter 7 bankruptcy proceeding investigating the identical criminal matters. And if so, whether Mr. Kossoff must prepare and create schedules, appear for oral examination under oath at a creditor committee meeting, and produce records on the very matters that are the subject of a criminal investigation.

2. Whether the Act of Production privilege applies where any reasonable juror would attribute the production of documents by Kossoff PLLC to Mitchell H. Kossoff and whether Appellant Debtor was unfairly denied the opportunity to make an *in camera* submission to the Bankruptcy Judge to establish the self-incriminatory nature of the requested documents and information prior to the Bankruptcy Court's ruling.

3. Whether the collective entity doctrine applies to a New York Professional Limited Liability Company that is operated, in effect, as a sole proprietorship with a sole member, such that Mr. Kossoff is denied his personal Constitutional right against self-incrimination.

Dated: New York, New York
August 30, 2021

Respectfully submitted,

s/Walter Mack

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